



T 510.850.4200
F 510.850.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
douglas@lozeaudrury.com

DEPT. OF JUSTICE - ENRD
ENVIRONMENT DIVISION

15 MAR 26 P4:47

BY U.S. CERTIFIED MAIL

March 23, 2015

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Attorney General
U.S. Department of Justice
Citizen Suit Coordinator
Room 2615
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Re: *Center for Community Action and Environmental Justice v. Tree Island Wire (USA), Inc.*; Case No. 5:14-cv-01858-JGB-KK – Settlement Agreement; 45-day review

Dear Citizen Suit Coordinators,

On March 23, 2015, the parties in the above-captioned case entered into a settlement agreement setting forth mutually agreeable settlement terms to resolve the matter in its entirety. Pursuant to the terms of the settlement agreement and 40 C.F.R. § 135.5, the enclosed settlement agreement is being submitted to the United States Environmental Protection Agency and the U.S. Department of Justice for a 45-day review period. If you have any questions regarding the settlement agreement, please feel free to contact me or counsel for Defendants listed below. Thank you for your attention to this matter.

Sincerely,

Douglas J. Chermak
Attorney for Plaintiff Center for Community Action and Environmental Justice

cc via First Class Mail: Jared Blumenfeld, Regional Administrator, EPA Region 9
James Ferruzzo, Counsel for Defendant, Tree Island Wire (USA)

Encl.

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into between Center for Community Action and Environmental Justice ("CCA EJ") and Tree Island Wire (USA), Inc. ("TI Wire") (collectively, the "SETTLING PARTIES") with respect to the following facts and objectives:

RECITALS

WHEREAS, CCA EJ is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, dedicated to working with communities to improve the social and natural environment. Penny Newman is the Executive Director of CCA EJ;

WHEREAS, TI Wire owns and operates an industrial and reinforcing wire products manufacturing facility located at 12459 Arrow Route in Rancho Cucamonga, California (the "Facility"). The Facility is operated pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Waste Discharge Requirements for Discharges of Storm Water Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit"). A map of the Facility is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, on or about June 24, 2014, CCA EJ provided TI Wire with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

WHEREAS, on September 5, 2014, CCA EJ filed its Complaint in the United States District Court for the Central District of California (*Center for Community Action and Environmental Justice v. Tree Island Wire (USA), Inc.*, Case No. 5:14-cv-01858-JGB-KK). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit B and incorporated by reference;

WHEREAS, TI Wire denies any and all of CCA EJ's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, CCAEJ and TI Wire, through their authorized representatives and without either adjudication of CCAEJ's claims or admission by TI Wire of any alleged violation or other wrongdoing, have chosen to resolve in full CCAEJ's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CCAEJ and TI Wire have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CCAEJ's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCAEJ and TI Wire hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the last date on which the signature of a party to this AGREEMENT is executed.

COMMITMENTS OF CCAEJ

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the Agency Approval Date, as defined in Paragraph 18 below, CCAEJ shall file a Stipulation to Dismiss and [Proposed] Order thereon pursuant to Federal Rule of Civil Procedure 41(a) (2) with the United States District Court for the Central District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CCAEJ is dismissing all claims in CCAEJ's Complaint. Consistent with Paragraph 24 and 25 herein, the Stipulation to Dismiss and [Proposed] Order shall state that the District Court will maintain jurisdiction through the Termination Date, as defined in Paragraph 23 below, or through the conclusion of any proceeding to enforce this AGREEMENT, for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT.

COMMITMENTS OF TI WIRE

3. **Compliance with General Permit.** TI Wire agrees to operate the Facility in compliance with the applicable requirements of the Clean Water Act, the General Permit through

and including June 30, 2015, and beginning on July 1, 2015, the new version of the General Permit, State Water Resources Control Board Water Quality Order No.2014-0057-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001 (“2015 General Permit”).

4. Implemented Storm Water Controls. TI Wire shall maintain in good working order all storm water collection and treatment systems at the Facility currently installed or to be installed pursuant to this AGREEMENT, including but not limited to, existing housekeeping measures.

5. Additional Best Management Practices. Within one hundred and eighty (180) calendar days after the Effective Date, TI Wire shall implement the following structural best management practices (“BMPs”) to improve the storm water pollution prevention measures at the Facility.

a. TI Wire shall construct a concrete berm along the southern boundary of the Facility. The berm shall contain a gap through which all storm water discharged from the southern boundary of the Facility passes. This new storm water outfall shall be called “E2” and replaces the previous storm water outfalls “E2” and “E3.”

b. TI Shall extend the concrete apron in the southern portion of the Facility up to the property line, where it will make contact with the berm described above in Paragraph 5(a).

c. TI Wire shall refurbish the swale that runs north to south along the front of the Facility, adjacent to the parking lot. At three separate points in the swale, TI Wire shall implement a series of Filtrexx socks designed to treat metals, suspended solids, and pH. These socks shall be weighted down or keyed into the ground to ensure maximum contact with all storm water discharged from the Facility at Outfall E1.

6. Additional Housekeeping. TI Wire shall use existing equipment to conduct sweeping of all paved areas of the Facility as required by weather conditions. In the event the existing equipment does not produce satisfactory results, TI Wire shall consider the lease of

improved equipment and/or, if TAMCO invests in an improved sweeper, TI Wire shall discuss a cooperative share arrangement with TAMCO.

7. Monitoring. TI Wire agrees to perform the monitoring described herein during the 2014-2015 wet season, and the 2015-2016 and 2016-2017 reporting years.

a. During the 2014-2015 wet season, the Facility shall sample and analyze storm water discharges from four (4) qualifying storm events (to the extent that such events occur) that result in discharge consistent with the requirements and protocols set forth in the General Permit. If by April 1, 2015, the Facility has not sampled the required number of discharges, said facility shall sample any storm events (between February 15 and June 30) that result in a discharge when the Facility is open until it meets the required number of sampling events.

b. During the 2015-2016 and 2016-2017 reporting years (July 1 – June 30), the Facility shall sample and analyze storm water discharges from four (4) qualifying storm events (to the extent that such events occur) that result in discharge consistent with the requirements and protocols set forth in the 2015 General Permit.

c. The Facility shall analyze each storm water sample taken in accordance with the General Permit and the 2015 General Permit (when applicable), and this Agreement for, at a minimum, pH, total suspended solids, oil and grease, specific conductance (only during 2014-2015 wet season), zinc, iron and aluminum.

d. TI Wire shall conduct monthly visual observations in accordance with the General Permit, and the 2015 General Permit when applicable. During each inspection, TI Wire shall photograph the storm water discharge locations at the Facility.

e. All photographs required by this AGREEMENT shall be in color and electronically formatted. Each photograph shall be identified by date, the person taking the photograph and the location of the feature being photographed. The title of each electronic photograph shall include, at a minimum, the date it was taken, and the location of the photographed area (for example, “2015.01.10 SW1”). On or before October 1 of

each year of this agreement, all photographs required by this AGREEMENT for the prior year shall be provided to CCAEJ upon request via compact disc(s).

8. Monitoring Results. Results from the Facility's sampling and analysis during the term of this AGREEMENT shall be provided to CCAEJ within thirty (30) days of receipt of the sampling results by TI Wire or its counsel.

9. Meet and Confer Regarding Exceedance of Numeric Action Levels. If analytical results for any storm water sample taken by the Facility during the 2014-2015 wet season, 2015-2016 reporting year, or 2016-2017 reporting year indicate that the average results for the storm water discharges from the Facility exceeds any the following Numeric Action Levels – Total Suspended Solids: 100 mg/L; Oil & Grease: 15 mg/L; Zinc: 0.26 mg/L; Aluminum: 0.75 mg/L; and Iron: 1.0 mg/L – or, if two or more analytical results from samples taken for any parameter within a reporting year exceed the instantaneous maximum NAL value (for Total Suspended Solids, and Oil and Grease), or are outside of the instantaneous maximum NAL range (for pH) – Total Suspended Solids: 400 mg/L; pH: 6.0-9.0 s.u.; Oil & Grease: 25 mg/L – TI Wire agrees to take responsive actions to improve its storm water management practices, including re-evaluating its structural and non-structural BMPs, and considering implementing additional BMPs aimed at reducing levels observed in storm water samples.

In furtherance of that objective, TI Wire shall prepare a written statement ("Memorandum") discussing:

- (1) Any exceedance or exceedances;
- (2) An explanation of the possible cause(s) and/or source(s) of any exceedance;
and
- (3) Potential additional feasible best management practices ("BMPs") to be considered to further reduce the possibility of future exceedance(s).

Such Memorandum shall be e-mailed and sent via first class mail to CCAEJ not later than July 30th during each year of this AGREEMENT.

10. Upon receipt of the Memorandum, CCAEJ may review and comment on any identified or omitted additional measures. If requested by CCAEJ within thirty (30) days of receipt of such Memorandum, CCAEJ and TI Wire shall meet and confer to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Numeric Action Levels. If requested by CCAEJ within thirty (30) days of receipt of such Memorandum, CCAEJ and TI Wire shall meet and confer and may conduct a site inspection within sixty (60) days after the due date of the Memorandum to discuss the contents of the Memorandum and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Numeric Action Levels. If within twenty-one (21) days of the parties meeting and conferring, the SETTLING PARTIES do not agree on the adequacy of the additional measures set forth in the Memorandum, the SETTLING PARTIES may agree to seek a settlement conference with the Magistrate Judge assigned to this action pursuant to Paragraphs 24 and 25 below. If the SETTLING PARTIES fail to reach agreement on additional measures, CCAEJ may bring a motion before the District Court consistent with Paragraph 24 and 25 below. If CCAEJ does not request a meet and confer regarding the Memorandum within the thirty (30) day period provided for in this paragraph, CCAEJ shall waive any right to object to such Memorandum pursuant to this AGREEMENT. The Parties may agree in writing to extend any dates contained in this paragraph in order to further this paragraph's meet and confer procedure.

11. Any concurrence or failure to object by CCAEJ with regard to the reasonableness of any additional measures required by this AGREEMENT or implemented by TI Wire shall not be deemed to be an admission of the adequacy of such measures should they fail to bring the Facility's storm water discharges into compliance with applicable water quality criteria or the BAT/BCT requirements set forth in the General Permit and/or the 2015 General Permit.

12. In addition to any site inspections conducted as part of meet and conferring on additional measures set forth above TI Wire shall permit representatives of CCAEJ to perform one (1) additional site visit to the Facility per year. Any such site visit must be during normal daylight business hours and only during the term of this AGREEMENT, provided that CCAEJ

provides to TI Wire via e-mail with at least one week prior notice and coordinates the site visit for a date and time that will cause minimal disruption to the Facility's operations.

13. Provision of Documents and Reports. During the life of this AGREEMENT, TI Wire shall provide CCAEJ with a copy of all documents submitted to the Regional Board or the State Water Resources Control Board ("State Board") concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit. Such documents and reports shall be mailed to CCAEJ contemporaneously with submission to such agency. Within fourteen business (14) days of a written request (via e-mail or regular mail) by CCAEJ, TI Wire also shall provide CCAEJ a copy of all documents referenced in this AGREEMENT from the year prior to the request, including but not limited to logs, photographs, or analyses.

14. Amendment of Storm Water Pollution Prevention Plan ("SWPPP"). Within one hundred and eighty (180) days after the District Court's entry of the Order, TI Wire shall amend the Facility's SWPPP to incorporate all changes, improvements, sample log forms, and best management practices set forth in or resulting from this AGREEMENT. TI Wire shall ensure that all maps, tables, and text comply with the requirements of the General Permit, and when applicable, the 2015 General Permit. TI Wire shall ensure that the SWPPP describes all structural and non-structural BMPs and details the measures to be installed. A copy of the amended SWPPP shall be provided to CCAEJ within thirty (30) days of completion.

15. Mitigation Payment. In recognition of the good faith efforts by TI Wire to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by TI Wire of any penalties, which have been disputed but may have been assessed in this action if it had been adjudicated adverse to TI Wire, the SETTLING PARTIES agree that TI Wire will pay the sum of thirty-five thousand dollars (\$35,000.00) to the Rose Foundation for Communities and the Environment ("Rose Foundation") for the sole purpose of providing grants to environmentally beneficial projects relating to water quality improvements in the Santa Ana River Watershed. Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94612, Attn: Tim Little. Payment shall be made by TI Wire to the Rose Foundation within fifteen (15) calendar days of the District Court's

entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. TI Wire shall copy CCAEJ with any correspondence and a copy of the check sent to the Rose Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES within thirty (30) days of when the funds are dispersed by the Rose Foundation, setting forth the recipient and purpose of the funds.

16. Fees, Costs, and Expenses. Tree Island shall reimburse CCAEJ in the total amount of twenty-eight thousand dollars \$28,000.00 to defray CCAEJ's investigation fees and costs, expert fees and costs, reasonable attorneys' fees, and all other reasonable costs incurred as a result of investigating the activities at the Facility, bringing these matters to Tree Island's attention, and negotiating a resolution of this action in the public interest. Payment shall be made by TI Wire within fifteen (15) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by TI Wire to CCAEJ shall be made in the form of a single check payable to "Lozeau Drury LLP," and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CCAEJ that have or could have been claimed in connection with CCAEJ's claims, up to and including the District Court's entry of the Order.

17. Compliance Oversight Costs. As reimbursement for CCAEJ's future fees and costs that will be incurred in order for CCAEJ to monitor TI Wire's compliance with this AGREEMENT and to effectively meet and confer and evaluate storm water monitoring results for the Facility, TI Wire agrees to reimburse CCAEJ for its reasonable fees and costs incurred in overseeing the implementation of this AGREEMENT up to three (3) annual payments (not exceeding \$3,000 addressing any monitoring associated with the 2014-2015 wet season, not exceeding \$3,000 addressing monitoring associated with the 2015-2016 reporting year, and not exceeding \$3,000 addressing monitoring associated with the 2016-2017 reporting year). Fees and costs reimbursable pursuant to this paragraph may include, but are not limited to, those incurred by CCAEJ or its counsel to conduct site inspections, review water quality sampling reports, review annual reports, discussion with representatives of TI Wire concerning potential changes to compliance requirements, preparation and participation in meet and confer sessions and mediation and water quality sampling. At the end of each meet and confer process

subsequent to each wet season covered by this AGREEMENT, CCAEJ shall provide an invoice containing an itemized description for any fees and costs claimed. TI Wire shall remit its check made payable to “Lozeau Drury LLP” within thirty (30) days of receipt of an invoice from CCAEJ that contains an itemized description of fees and costs incurred by CCAEJ to monitor implementation of the AGREEMENT during the previous twelve (12) months.

18. Review by Federal Agencies. CCAEJ shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the “Agencies”) via certified mail, return receipt requested, within five (5) days after the Effective Date of this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies’ review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts and the confirming correspondence of DOJ. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CCAEJ and TI Wire agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CCAEJ and TI Wire are unable to resolve any issue(s) raised by the Agencies in their comments, CCAEJ and TI Wire agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the issue(s). If the SETTLING PARTIES cannot resolve the issue(s) through a settlement conference, this AGREEMENT shall be null and void. The date of (a) the Agencies’ unconditioned approval of this AGREEMENT, (b) the expiration of the Agencies’ review period, or (c) the SETTLING PARTIES’ resolution of all issues raised by the Agencies, whichever is earliest, shall be defined as the “Agency Approval Date.”

NO ADMISSION OR FINDING

19. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT and/or any payment pursuant to the AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

20. In consideration of the above, and except as otherwise provided by this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors and agents from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which arise or could have arisen from the Complaint or Notice Letters, including, without limitation, all claims for injunctive relief, damages, penalties, fines, sanctions, mitigation, fees (including fees of attorneys, experts, and others), costs, expenses or any other sum incurred or claimed or which could have been claimed in the Complaint or Notice Letters, for the alleged failure of Defendant to comply with the Clean Water Act at the Facility, up to and including the Termination Date of this AGREEMENT, as defined in Paragraph 23.

21. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter, and the Complaint Facility up to and including the Termination Date of this AGREEMENT.

22. CCAEJ agrees that, beginning on the Effective Date and ending on the Termination Date, CCAEJ will not support any other lawsuits against the Facility, by providing financial assistance, information to third parties, personnel time or other affirmative actions, against or relating to the Facility that may be proposed by other groups or individuals who would rely upon

the citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean Water Act, the General Permit, or the 2015 General Permit.

TERMINATION DATE OF AGREEMENT

23. Unless an extension is agreed to in writing by the SETTLING PARTIES, this AGREEMENT shall terminate on December 15, 2017 (the "Termination Date"), or through the conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by this AGREEMENT.

DISPUTE RESOLUTION PROCEDURES

24. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer to resolve any dispute arising under this AGREEMENT. In the event that such disputes cannot be resolved through this meet and confer process, the SETTLING PARTIES agree to request a settlement meeting before the Magistrate Judge assigned to this action. In the event that the SETTLING PARTIES cannot resolve the dispute by the conclusion of the settlement meeting with the Magistrate Judge, the SETTLING PARTIES agree to submit the dispute via motion to the District Court.

25. In resolving any dispute arising from this AGREEMENT, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof.

GENERAL PROVISIONS

26. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply

shall notify the other in writing within seven (7) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

27. Construction. The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, the 2015 General Permit, and the Clean Water Act or specifically herein.

28. Choice of Law. This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

29. Severability. In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

30. Correspondence. All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to CCA EJ:	<u>Penny Newman,</u> <u>Executive Director</u> <u>Center for Community Action and</u> <u>Environmental Justice</u> <u>P.O. Box 33124</u> <u>Riverside, CA 92519</u> <u>(951) 360-8451</u> <u>Penny.newman@ccaej.org</u>	Copy to:	<u>Michael R. Lozeau</u> <u>Douglas J. Chermak</u> <u>Lozeau Drury LLP</u> <u>410 12th Street, Suite 250</u> <u>Oakland, CA 94607</u> <u>(510) 836-4200</u> <u>michael@lozeaudrury.com</u> <u>doug@lozeaudrury.com</u>
If to TI Wire:	<u>Dale Young</u> <u>Tree Island Wire (USA), Inc.</u>	Copy to:	<u>James J. Ferruzzo</u> <u>Ferruzzo & Ferruzzo, LLP</u>

12495 Arrow Route
Rancho Cucamonga, CA 91739
(909) 594-7511
dyoung@treeisland.com

3737 Birch, Suite 400
Newport Beach, CA 92660
(949) 608-6900
jjferruzzo@ferruzzo.com

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

31. Counterparts. This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

32. Assignment. Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

33. Modification of the Agreement. This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.


34. Full Settlement. This AGREEMENT constitutes a full and final settlement of this matter. It is expressly understood and agreed that the AGREEMENT has been freely and voluntarily entered into by the SETTLING PARTIES with and upon advice of counsel.

35. Integration Clause. This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

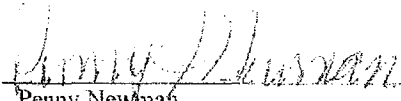
36. Authority. The undersigned representatives for CCAEJ and TI Wire each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

TREE ISLAND WIRE (USA), INC.

By: 
Name: Nancy Davies
Title: Vice President
Date:

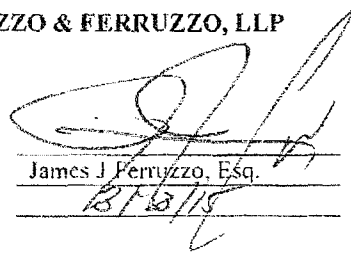
**CENTER FOR COMMUNITY ACTION
AND ENVIRONMENTAL JUSTICE**

By: 
Name: Penny Newman
Title: Executive Director
Date: 3-23-2015

APPROVED AS TO FORM:

For: Defendant

FERRUZZO & FERRUZZO, LLP

By: 
Name: James J. Ferruzzo, Esq.
Date: 3/23/15

For: Plaintiff

LOZEAU DRURY LLP

By: 
Name: Douglas J. Chermak, Esq.
Date: 3/23/15

EXHIBIT A

EXHIBIT B

1 Michael R. Lozeau (State Bar No. 142893)
2 Richard T. Drury (State Bar No. 163559)
3 Douglas J. Chermak (State Bar No. 233382)
4 LOZEAU DRURY LLP
5 410 12th Street, Suite 250
6 Oakland, CA 94607
7 Tel: (510) 836-4200
8 Fax: (510) 836-4205 (fax)
9 E-mail: michael@lozeaudrury.com
10 richard@lozeaudrury.com
11 doug@lozeaudrury.com

12 Gideon Kracov (State Bar No. 179815)
13 LAW OFFICE OF GIDEON KRACOV
14 801 S. Grand Avenue, 11th Floor
15 Los Angeles, CA 90017-4645
16 Tel: (213) 629-2071
17 Fax: (213) 623-7755
18 Email: gk@gideonlaw.net

19 Attorneys for Plaintiff
20 CENTER FOR COMMUNITY
21 ACTION AND ENVIRONMENTAL
22 JUSTICE

23 **UNITED STATES DISTRICT COURT**
24 **CENTRAL DISTRICT OF CALIFORNIA**

25 CENTER FOR COMMUNITY
26 ACTION AND ENVIRONMENTAL
27 JUSTICE, a non-profit corporation,

28 Plaintiff,

vs.

TREE ISLAND WIRE (USA), INC., a
corporation,

Defendant.

Case No. 5:14-cv-1858

**COMPLAINT FOR
DECLARATORY AND
INJUNCTIVE RELIEF AND CIVIL
PENALTIES**

(Federal Water Pollution Control Act,
33 U.S.C. §§ 1251 to 1387)

CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL JUSTICE

("CCA EJ"), a California non-profit association, by and through its counsel, hereby

COMPLAINT

1 alleges:

2 **I. JURISDICTION AND VENUE**

3
4 1. This is a civil suit brought under the citizen suit enforcement provisions
5 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean
6 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties
7 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
8 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
9 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
10 (power to issue declaratory relief in case of actual controversy and further necessary
11 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
12 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

13
14
15
16 2. On June 24, 2014, Plaintiff provided notice of Defendant’s violations of
17 the Act, and of its intention to file suit against Defendant, to the Administrator of the
18 United States Environmental Protection Agency (“EPA”); the Administrator of EPA
19 Region IX; the Executive Director of the State Water Resources Control Board
20 (“State Board”); the Executive Officer of the California Regional Water Quality
21 Control Board, Santa Ana Region (“Regional Board”); and to Defendant, as required
22 by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of CCAEJ’s notice
23 letter is attached as Exhibit A, and is incorporated by reference.
24
25
26

27
28 3. More than sixty days have passed since notice was served on Defendant

1 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
2 alleges, that neither the EPA nor the State of California has commenced or is
3 diligently prosecuting a court action to redress the violations alleged in this
4 complaint. This action's claim for civil penalties is not barred by any prior
5 administrative penalty under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
6

7
8 4. Venue is proper in the Central District of California pursuant to Section
9 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
10 located within this judicial district.
11

12 **II. INTRODUCTION**

13
14 5. This complaint seeks relief for Defendant's discharges of polluted storm
15 water and non-storm water pollutants from Defendant TREE ISLAND WIRE (USA),
16 INC.'s ("TI Wire" or "Defendant") industrial facility located at 12459 Arrow Route
17 in Rancho Cucamonga, California ("the Facility") in violation of the Act and National
18 Pollutant Discharge Elimination System ("NPDES") Permit No. CAS000001, State
19 Water Resources Control Board Water Quality Order No. 91-13-DWQ, as amended
20 by Water Quality Order No. 92-12-DWQ and Water Quality Order No. 97-03-DWQ
21 (hereinafter the "Permit" or "General Permit"). Defendant's violations of the
22 discharge, treatment technology, monitoring requirements, and other procedural and
23 substantive requirements of the Permit and the Act are ongoing and continuous.
24
25
26
27

28 ///

1 **III. PARTIES**

2 6. Plaintiff CENTER FOR COMMUNITY ACTION AND
3 ENVIRONMENTAL JUSTICE (“CCA EJ”) is a non-profit public benefit corporation
4 under the laws of the State of California with its main office in Jurupa Valley,
5 California. CCA EJ is dedicated to working with communities to advocate for
6 environmental justice and pollution prevention. CCA EJ and its members are deeply
7 concerned with protecting the environment in and around their communities,
8 including the Santa Ana River Watershed. To further these goals, CCA EJ actively
9 seeks federal and state agency implementation of the Act and other laws and, where
10 necessary, directly initiates enforcement actions on behalf of itself and its members.
11

12 7. CCA EJ has members living in the community adjacent to the Facility
13 and the Santa Ana River Watershed. They enjoy using the Santa Ana River for
14 recreation and other activities. Members of CCA EJ use and enjoy the waters into
15 which Defendant has caused, is causing, and will continue to cause, pollutants to be
16 discharged. Members of CCA EJ use those areas to recreate and view wildlife, among
17 other things. Defendant’s discharges of pollutants threaten or impair each of those
18 uses or contribute to such threats and impairments. Thus, the interests of CCA EJ’s
19 members have been, are being, and will continue to be adversely affected by
20 Defendant’s failure to comply with the Clean Water Act and the Permit. The relief
21 sought herein will redress the harms to Plaintiff caused by Defendant’s activities.
22
23
24
25
26
27
28

1 8. Continuing commission of the acts and omissions alleged above will
2 irreparably harm Plaintiff and its members, for which harm they have no plain, speedy
3 or adequate remedy at law.
4

5 9. Defendant TI WIRE COMPANY is a corporation that operates an
6 industrial and reinforcing wire products facility in Rancho Cucamonga, California.
7

8 **IV. STATUTORY BACKGROUND**

9 10. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge
10 of any pollutant into waters of the United States, unless such discharge is in
11 compliance with various enumerated sections of the Act. Among other things,
12 Section 301(a) prohibits discharges not authorized by, or in violation of, the terms of
13 an NPDES permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
14

15 11. Section 402(p) of the Act establishes a framework for regulating
16 municipal and industrial storm water discharges under the NPDES program. 33
17 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
18 Section 402(p) to regulate industrial storm water discharges through individual
19 permits issued to dischargers or through the issuance of a single, statewide general
20 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).
21

22 12. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
23 of the U.S. EPA has authorized California's State Board to issue NPDES permits
24 including general NPDES permits in California.
25
26
27
28

1 13. The State Board elected to issue a statewide general permit for industrial
2 storm water discharges. The State Board issued the General Permit on or about
3 November 19, 1991, modified the General Permit on or about September 17, 1992,
4 and reissued the General Permit on or about April 17, 1997, pursuant to Section
5 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).
6

7 14. In order to discharge storm water lawfully in California, industrial
8 dischargers must comply with the terms of the General Permit or have obtained and
9 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).
10

11 15. The General Permit contains several prohibitions. Effluent Limitation
12 B(3) of the General Permit requires dischargers to reduce or prevent pollutants in
13 their storm water discharges through implementation of the Best Available
14 Technology Economically Achievable (“BAT”) for toxic and nonconventional
15 pollutants and the Best Conventional Pollutant Control Technology (“BCT”) for
16 conventional pollutants. BAT and BCT include both nonstructural and structural
17 measures. General Permit, Section A(8). Discharge Prohibition A(2) of the General
18 Permit prohibits storm water discharges and authorized non-storm water discharges
19 that cause or threaten to cause pollution, contamination, or nuisance. Receiving
20 Water Limitation C(1) of the General Permit prohibits storm water discharges to any
21 surface or ground water that adversely impact human health or the environment.
22 Receiving Water Limitation C(2) of the General Permit prohibits storm water
23
24
25
26
27
28

1 discharges that cause or contribute to an exceedance of any applicable water quality
2 standards contained in Statewide Water Quality Control Plan or the applicable
3 Regional Board's Basin Plan.
4

5 16. In addition to absolute prohibitions, the General Permit contains a
6 variety of substantive and procedural requirements that dischargers must meet.
7
8 Facilities discharging, or having the potential to discharge, storm water associated
9 with industrial activity that have not obtained an individual NPDES permit must
10 apply for coverage under the State's General Permit by filing a Notice of Intent to
11 Comply ("NOI"). The General Permit requires existing dischargers to have filed their
12 NOIs before March 30, 1992.
13
14

15 17. Dischargers must develop and implement a Storm Water Pollution
16 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control
17 facilities and measures that comply with the BAT and BCT standards. The General
18 Permit requires that an initial SWPPP have been developed and implemented before
19 October 1, 1992. The SWPPP must, among other requirements, identify and evaluate
20 sources of pollutants associated with industrial activities that may affect the quality of
21 storm and non-storm water discharges from the facility and identify and implement
22 site-specific best management practices ("BMPs") to reduce or prevent pollutants
23 associated with industrial activities in storm water and authorized non-storm water
24 discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT
25
26
27
28

1 (Section B(3)). The SWPPP must include: a description of individuals and their
2 responsibilities for developing and implementing the SWPPP (Section A(3)); a site
3 map showing the facility boundaries, storm water drainage areas with flow pattern
4 and nearby water bodies, the location of the storm water collection, conveyance and
5 discharge system, structural control measures, impervious areas, areas of actual and
6 potential pollutant contact, and areas of industrial activity (Section A(4)); a list of
7 significant materials handled and stored at the site (Section A(5)); a description of
8 potential pollutant sources including industrial processes, material handling and
9 storage areas, dust and particulate generating activities, and a description of
10 significant spills and leaks, a list of all non-storm water discharges and their sources,
11 and a description of locations where soil erosion may occur (Section A(6)). The
12 SWPPP must include an assessment of potential pollutant sources at the Facility and
13 a description of the BMPs to be implemented at the Facility that will reduce or
14 prevent pollutants in storm water discharges and authorized non-storm water
15 discharges, including structural BMPs where non-structural BMPs are not effective
16 (Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must
17 be revised where necessary (Sections A(9), (10)).

18
19
20
21
22
23
24
25 18. Section C(11)(d) of the General Permit's Standard Provisions requires
26 dischargers to report any noncompliance to the Regional Board. *See also* Section
27 E(6). Section A(9) of the General Permit requires an annual evaluation of storm
28

1 water controls including the preparation of an evaluation report and implementation
2 of any additional measures in the SWPPP to respond to the monitoring results and
3 other inspection activities.
4

5 19. The General Permit requires dischargers commencing industrial
6 activities before October 1, 1992, to develop and implement an adequate written
7 monitoring and reporting program no later than October 1, 1992. Existing facilities
8 covered under the General Permit must implement all necessary revisions to their
9 monitoring programs no later than August 1, 1997.
10
11

12 20. As part of their monitoring program, dischargers must identify all storm
13 water discharge locations that produce a significant storm water discharge, evaluate
14 the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
15 pollution control measures set out in the SWPPP are adequate and properly
16 implemented. Dischargers must conduct visual observations of these discharge
17 locations for at least one storm per month during the wet season (October through
18 May) and record their findings in their Annual Report. Dischargers must also collect
19 and analyze storm water samples from at least two storms per year. Section B(5)(a)
20 of the General Permit requires that dischargers “shall collect storm water samples
21 during the first hour of discharge from (1) the first storm event of the wet season, and
22 (2) at least one other storm event in the wet season. All storm water discharge
23 locations shall be sampled.” Section B(5)(c)(i) requires dischargers to sample and
24
25
26
27
28

1 analyze during the wet season for basic parameters, such as pH, total suspended
2 solids, electrical conductance, total organic content or oil & grease, and certain
3 industry-specific parameters. Section B(5)(c)(ii) requires dischargers to sample for
4 toxic chemicals and other pollutants likely to be in the storm water discharged from
5 the facility. Section B(5)(c)(iii) requires discharges to sample for parameters
6 dependent on the standard industrial classification (“SIC”) codes for activities at the
7 facility. Section B(7)(a) indicates that the visual observations and samples must
8 represent the “quality and quantity of the facility’s storm water discharges from the
9 storm event.” Section B(7)(c) requires that “if visual observation and sample
10 collection locations are difficult to observe or sample...facility operators shall
11 identify and collect samples from other locations that represent the quality and
12 quantity of the facility’s storm water discharges from the storm event.”
13
14
15
16
17

18 21. Section B(14) of the General Permit requires dischargers to submit an
19 annual report by July 1 of each year to the executive officer of the relevant Regional
20 Board. The annual report must be signed and certified by an appropriate corporate
21 officer. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires
22 the discharger to include in their annual report an evaluation of their storm water
23 controls, including certifying compliance with the General Permit. *See also* Sections
24 C(9), C(10) and B(14).
25
26
27
28

22. The General Permit does not provide for any mixing zones by

1 dischargers. The General Permit does not provide for any dilution credits to be
2 applied by dischargers.

3 23. The Regional Board has established water quality standards for the Santa
4 Ana River Watershed in the “Water Quality Control Plan for the Santa Ana River
5 Basin (Region 8),” generally referred to as the Basin Plan.
6

7 24. The Basin Plan includes a narrative toxicity standard which states that
8 “[t]oxic substances shall not be discharged at levels that will bioaccumulate in
9 aquatic resources to levels which are harmful to human health.”
10

11 25. The Basin Plan includes a narrative oil and grease standard which states
12 that “[w]aste discharges shall not result in deposition of oil, grease, wax, or other
13 material in concentrations which result in a visible film or in coating objects in the
14 water, or which cause a nuisance or adversely affect beneficial uses.”
15

16 26. The Basin Plan provides that “waters shall not contain suspended or
17 settleable solids in amounts which cause a nuisance or adversely affect beneficial
18 uses...”
19

20 27. The Basin Plan provides that “[t]he pH of inland surface waters shall not
21 be raised above 8.5 or depressed below 6.5...”
22

23 28. The Basin Plan contains a narrative floatables standard which states that
24 “[w]aste discharges shall not contain floating materials, including solids, liquids,
25 foam or scum, which cause a nuisance or adversely affect beneficial uses.”
26
27
28

1 29. The Basin Plan contains a narrative color standard which states that
2 “[w]aste discharges shall not result in coloration of the receiving waters which causes
3 a nuisance or adversely affect beneficial uses. The natural color of fish, shellfish or
4 other inland surface water resources used for human consumption shall not be
5 impaired.”
6

7
8 30. The Basin Plan contains a nitrate standard that “[n]itrate-nitrogen
9 standards shall not exceed 45 mg/L (as NO₃) or 10 mg/L (as N) in inland surface
10 waters designated MUN as a result of controllable water quality factors.”
11

12 31. The EPA has adopted a freshwater numeric water quality standard for
13 zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712
14 (May 18, 2000).
15

16 32. EPA has established Parameter Benchmark Values as guidelines for
17 determining whether a facility discharging industrial storm water has implemented
18 the requisite BAT and BCT. EPA has established Parameter Benchmark Values for
19 the following parameters, among others: pH – 6.0 - 9.0 standard units (“s.u.”); total
20 suspended solids (“TSS”) – 100 mg/L; oil and grease (“O&G”) – 15 mg/L; nitrate +
21 nitrite as nitrogen (“N+N”) – 0.68 mg/L; aluminum – 0.75 mg/L; iron – 1.0 mg/L;
22 and zinc – 0.13 mg/L. The benchmark value for zinc is also hardness dependent. The
23 value here is based on a hardness range of 100-125 mg/L CaCO₃, which is the default
24 listing in the California Toxics Rule.
25
26
27
28

1 33. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
2 enforcement actions against any “person,” including individuals, corporations, or
3 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
4 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
5 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
6 penalties of up to \$37,500 per day per violation, pursuant to Sections 309(d) and 505
7 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.
8
9

10
11 **V. STATEMENT OF FACTS**

12 34. Defendant TI Wire operates an industrial and reinforcing wire products
13 manufacturing facility located at 12459 Arrow Route in Rancho Cucamonga,
14 California. On information and belief, CCAEJ alleges that the Facility is engaged in
15 the manufacturing of wire and wire products. The Facility falls within SIC Code
16 3315. The majority of the Facility is paved and used for manufacturing, processing,
17 storing, and transporting materials related to production processes. On information
18 and belief, Plaintiff alleges that there are at least two large buildings located on the
19 property. Plaintiff is informed and believes, and thereupon alleges that
20 manufacturing, processing, and storage of materials is conducted both inside and
21 outside of these buildings.
22
23
24
25

26 35. Defendant channels and collects storm water falling on the Facility
27 through a series of storm water drains that lead to at least three storm water outfalls.
28

1 The Facility's outfalls discharge to channels that flow into San Bernardino County's
2 municipal storm sewer system, which discharges into Day Creek, which flows into
3 Reach 3 of the Santa Ana River.
4

5 36. On information and belief, Plaintiff alleges that the industrial activities
6 at the site include the manufacturing of wire and wire products, including but not
7 limited to bulk nails, catch coils, electric fence wire, fence accessories, galvanized
8 chain link fence wire, high carbon pulp bailing and unitizing wire, high carbon
9 recycling wire, high carbon upholstery spring wire, high-tensile fence wire, hog and
10 livestock panels, low carbon bright wire, low carbon galvanized wire, merchant wire
11 coils, mine mesh, packages nails and fasteners, rebar tie wire, and welded wire
12 reinforcement.
13
14
15

16 37. On information and belief, Plaintiff alleges that all storm water
17 discharges from the Facility contain storm water that is commingled with runoff from
18 areas at the Facility where industrial processes occur.
19

20 38. Significant activities at the site take place outside and are exposed to
21 rainfall. These activities include the production and storage of the numerous types of
22 materials and finished products handled by the Facility. Loading and delivery of
23 materials occurs outside. Trucks enter and exit the Facility directly from and to a
24 public road. Outdoor areas of the Facility are exposed to storm water and storm
25 flows due to the lack of overhead coverage, berms, and other storm water controls.
26
27
28

1 39. Industrial machinery, heavy equipment and vehicles, including trucks
2 and forklifts, are operated at the Facility in areas exposed to storm water flows.
3 Plaintiff is informed and believes, and thereupon alleges, that such machinery and
4 equipment leak contaminants such as oil, grease, diesel fuel, coolant, and hydraulic
5 fluids that are exposed to storm water flows, and that such machinery and equipment
6 track sediment and other contaminants throughout the Facility. Plaintiff is informed
7 and believes, and thereupon alleges that storm water flows easily over the surface of
8 the Facility, collecting suspended sediment, dirt, oils, grease, metals, and other
9 pollutants as it flows toward the storm water drains. Storm water and any pollutants
10 contained in that storm water entering the drains flows directly to the Facility's
11 outfalls which discharge to channels that flow into San Bernardino County's
12 municipal storm sewer system, which discharges into Day Creek, which flows into
13 Reach 3 of the Santa Ana River.
14

15 40. The management practices at the Facility are wholly inadequate to
16 prevent the sources of contamination described above from causing the discharge of
17 pollutants to waters of the United States. The Facility lacks sufficient structural
18 controls such as grading, berming, roofing, containment, or drainage structures to
19 prevent rainfall and storm water flows from coming into contact with these and other
20 exposed sources of contaminants. The Facility lacks sufficient structural controls to
21 prevent the discharge of water once contaminated. The Facility lacks adequate storm
22
23
24
25
26
27
28

1 water pollution treatment technologies to treat storm water once contaminated.

2 41. Since at least February 5, 2009, Defendant has taken samples or arranged
3 for samples to be taken of storm water discharges at the Facility. The sample results
4 were reported in the Facility's annual reports submitted to the Regional Board.
5 Defendant TI Wire certified each of those annual reports pursuant to Sections A and
6 C of the General Permit.
7

8 42. Since at least February 13, 2009, the Facility has detected pH, TSS, zinc,
9 aluminum, and iron in storm water discharged from the Facility. Levels of these
10 pollutants detected in the Facility's storm water have been in excess of EPA's
11 numeric parameter benchmark values. Levels of these pollutants detected in the
12 Facility's storm water have been in excess of and/or outside of the parameters for
13 water quality standards established in the Basin Plan, as well in violation of narrative
14 standards established in the Basin Plan.
15

16 43. The following discharges of pollutants from the Facility have contained
17 concentrations of pollutants in excess of numeric water quality standards established
18 in the Basin Plan and the California Toxics Rule as well as narrative standards in the
19 Basin Plan. They have thus violated Discharge Prohibitions A(1) and A(2) and
20 Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of
21 Effluent Limitation B(3) of the General Industrial Storm Water Permit.
22
23
24
25
26
27
28

Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Standard / California Toxics Rule	Outfall (as identified by the Facility)
12/19/2013	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
12/19/2013	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
10/28/2013	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
10/28/2013	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
2/8/2013	pH	9.1 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
2/8/2013	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
11/4/2011	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
11/4/2011	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
11/4/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
10/6/2011	pH	9.2 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
10/6/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
10/6/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
4/28/2010	pH	9 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
4/28/2010	pH	9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
4/28/2010	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
12/19/2013	Zinc	0.94 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
12/19/2013	Zinc	0.4 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
10/28/2013	Zinc	0.16 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
10/28/2013	Zinc	1.7 mg/L	0.12 mg/L (CMC)	E-2 South of Office
10/28/2013	Zinc	0.69 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
2/8/2013	Zinc	0.14 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
2/8/2013	Zinc	4.3 mg/L	0.12 mg/L (CMC)	E-2 South of Office
11/4/2011	Zinc	2 mg/L	0.12 mg/L (CMC)	E-1 West Culvert

1	11/4/2011	Zinc	1.2 mg/L	0.12 mg/L (CMC)	E-2 South of Office
2	11/4/2011	Zinc	0.46 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
3	10/6/2011	Zinc	0.66 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
4	10/6/2011	Zinc	0.45 mg/L	0.12 mg/L (CMC)	E-2 South of Office
5	10/6/2011	Zinc	0.82 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
6	10/6/2010	Zinc	1.7 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
7	10/6/2010	Zinc	1 mg/L	0.12 mg/L (CMC)	E-2 South of Office
8	10/6/2010	Zinc	0.45 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
9	4/28/2010	Zinc	0.27 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
10	4/28/2010	Zinc	0.14 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
11	4/30/2014	Narrative	Cloudy, Debris	Basin Plan at 4-16; Basin Plan at 4-11	Discharge E1
12					
13	12/19/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
14	12/19/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
15	11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
16	11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E2
17	11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
18	10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
19	10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E2
20	10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
21	2/8/2013	Narrative	Cloudy, Dirt	Basin Plan at 4-16	E-2 South of Office
22	3/31/2012	Narrative	Cloudy	Basin Plan at 4-16	E-2 South of Office
23	3/31/2012	Narrative	Cloudy	Basin Plan at 4-16	E-3 South of EVG
24	1/21/2012	Narrative	Cloudy grey water	Basin Plan at 4-16	E-2 South of Office
25	1/21/2012	Narrative	Cloudy grey water	Basin Plan at 4-16	E-3 South of EVG
26	10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-1 West Culvert
27	10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-2 South of Office
28					

1	10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-3 South of EVG
2	10/5/2010	Narrative	Oil sheen and	Basin Plan at 4-15;	
3			murky water	Basin Plan at 4-16	E-1 West Culvert
4	10/5/2010	Narrative	Oil sheen and	Basin Plan at 4-15;	
5			murky water	Basin Plan at 4-16	E-2 South of Office
6	10/5/2010	Narrative	Oil sheen and	Basin Plan at 4-15;	
7			murky water	Basin Plan at 4-16	E-3 South of EVG

8

9 44. The level of pH in storm water detected by the Facility has been outside

10 the range of the benchmark value for pH of 6.0 – 9.0 standard units (“s.u.”)

11 established by EPA. The level of pH in storm water detected by the Facility has been

12 outside the range of 6.5 – 8.5 s.u. established by the Basin Plan. Defendant measured

13 storm water discharges with a pH level in excess of 8.5 s.u. in almost every storm

14 water sample taken at the Facility for the past five years, including December 19,

15 2013; October 28, 2013; February 8, 2013; November 4, 2011; October 6, 2011;

16 October 6, 2010; and April 28, 2010. In addition, the Facility measured pH levels in

17 excess of 9.0 s.u. on February 8, 2013, and October 6, 2011.

18

19 45. The level of TSS in storm water detected by the Facility has exceeded

20 the benchmark value for TSS of 100 mg/L established by EPA. For example, on

21 October 28, 2013, the level of TSS measured by Defendant at the “E-2” outfall was

22 1300 mg/L. That level of TSS is 13 times the benchmark value for TSS. TI Wire

23 also has measured levels of TSS in storm water discharged from the Facility in excess

24

25

26

27

28

1 of 100 mg/L on February 8, 2013; November 4, 2011; October 6, 2011; and October
2 6, 2010.

3 46. The levels of zinc in storm water detected by the Facility have exceeded
4 the freshwater numeric water quality standard established by the EPA of 0.12 mg/L
5 for zinc (CMC). For example, on October 28, 2013, the level of zinc measured from
6 one of the Facility's storm water outfalls was 1.7 mg/L. That level of zinc is over 14
7 times the CMC for zinc.
8
9

10 47. The level of zinc in storm water detected by the Facility has exceeded
11 the benchmark value for zinc of 0.13 mg/L established by EPA. For example, on
12 October 28, 2013, the level of zinc measured by Defendants at one of the Facility's
13 outfalls was 1.7 mg/L. That level of zinc is over 13 times the benchmark value for
14 zinc. The Facility also has measured levels of zinc in storm water discharged from
15 the Facility in excess of 0.13 mg/L in nearly every other storm water sample it has
16 taken for the past five years, including December 19, 2013; February 8, 2013;
17 November 4, 2011; October 6, 2011; October 6, 2010; and April 28, 2010.
18
19
20
21

22 48. The level of aluminum in storm water detected by the Facility has
23 exceeded the benchmark value for aluminum of 0.75 mg/L established by EPA. For
24 example, on October 28, 2013, the level of aluminum measured by Defendants at one
25 of the Facility's outfalls was 26 mg/L. That level of aluminum is almost 35 times the
26 benchmark value for aluminum. The Facility also has measured levels of aluminum
27
28

1 in storm water discharged from the Facility in excess of 0.75 mg/L in nearly every
2 other storm water sample it has taken for the past five years, including December 19,
3 2013; February 8, 2013; November 4, 2011; October 6, 2011; October 6, 2010; and
4 April 28, 2010.
5

6 49. On information and belief, Plaintiff alleges that Defendant failed to
7 analyze its storm water discharges for iron during the past five years. Section
8 B(5)(c)(ii) of the General Permit requires the Facility to analyze storm water samples
9 for “toxic chemicals and other pollutants that are likely to be present in storm water
10 discharges in significant quantities.” During the 2008-2009 wet season, Defendant
11 analyzed its storm water discharges for iron and measured levels in every sample well
12 in excess of the EPA’s Benchmark value for iron of 1.0 mg/L. In addition, the
13 Facility’s Annual Reports mention iron oxide from mechanical de-scaling operations
14 as a potential pollutant source. On information and belief, Plaintiff alleges that iron
15 is likely to be present in Defendant’s storm water discharges.
16
17
18
19
20

21 50. On information and belief, Plaintiff alleges that Defendant failed to
22 analyze its storm water discharges for N+N during the past five years. During the
23 2006-2007 wet season, Defendant analyzed its storm water discharges for N+N and
24 measured levels in every sample well in excess of the EPA’s Benchmark value for
25 N+N of 0.68 mg/L. On information and belief, Plaintiff thus alleges that N+N is
26 likely to be present in Defendant’s storm water discharges.
27
28

1 51. On information and belief, Plaintiff alleges that since at least July 7,
2 2009, Defendant has failed to implement BAT and BCT at the Facility for its
3 discharges of pH, TSS, iron, N+N, zinc, aluminum, and other un-monitored
4 pollutants. Section B(3) of the General Permit requires that Defendant implement
5 BAT for toxic and nonconventional pollutants and BCT for conventional pollutants
6 by no later than October 1, 1992. As of the date of this Complaint, Defendant has
7 failed to implement BAT and BCT.
8
9

10 52. On information and belief, Plaintiff alleges that since at least July 7,
11 2009, Defendant has failed to implement an adequate Storm Water Pollution
12 Prevention Plan for the Facility. Plaintiff is informed and believes, and thereupon
13 alleges, that the SWPPP prepared for the Facility does not set forth site-specific best
14 management practices for the Facility that are consistent with BAT or BCT for the
15 Facility. Plaintiff is informed and believes, and thereupon alleges, that the SWPPP
16 prepared for the Facility does not include an adequate assessment of potential
17 pollutant sources, structural pollutant control measures employed by the Defendant, a
18 list of actual and potential areas of pollutant contact, or an adequate description of
19 best management practices to be implemented at the Facility to reduce pollutant
20 discharges. According to information available to CCAEJ, Defendant's SWPPP has
21 not been evaluated to ensure its effectiveness and revised where necessary to further
22 reduce pollutant discharges. Plaintiff is informed and believes, and thereupon alleges,
23
24
25
26
27
28

1 that the SWPPP does not include each of the mandatory elements required by Section
2 A of the General Permit.

3 53. Information available to CCAEJ indicates that as a result of these
4 practices, storm water containing excessive pollutants is being discharged during rain
5 events from the Facility directly to channels that flow into San Bernardino County's
6 municipal storm sewer system, which discharges into Day Creek, which flows into
7 Reach 3 of the Santa Ana River.
8

9
10 54. Plaintiff is informed and believes, and thereupon alleges, that Defendant
11 has failed and continues to fail to alter the Facility's SWPPP and site-specific BMPs
12 consistent with Section A(9) of the General Permit.
13

14
15 55. Plaintiff is informed and believes that Defendant failed to submit to the
16 Regional Board a true and complete annual report certifying compliance with the
17 General Permit since at least June 28, 2010. Pursuant to Sections A(9)(d), B(14), and
18 C(9), (10) of the General Permit, Defendant must submit an annual report, that is
19 signed and certified by the appropriate corporate officer, outlining the Facility's
20 storm water controls and certifying compliance with the General Permit. Plaintiff is
21 informed and believes, and thereupon alleges, that Defendant has signed incomplete
22 annual reports that purported to comply with the General Permit when there was
23 significant noncompliance at the Facility.
24
25
26

27 56. Information available to Plaintiff indicates that Defendant has not
28

1 fulfilled the requirements set forth in the General Permit for discharges from the
2 Facility due to the continued discharge of contaminated storm water. Plaintiff is
3 informed and believes, and thereupon alleges, that all of the violations alleged in this
4 Complaint are ongoing and continuing.
5

6 **VI. CLAIMS FOR RELIEF**

7
8 **FIRST CAUSE OF ACTION**

9 **Failure to Implement the Best Available and
10 Best Conventional Treatment Technologies
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

11 57. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
12 fully set forth herein.

13
14 58. The General Permit's SWPPP requirements and Effluent Limitation B(3)
15 require dischargers to reduce or prevent pollutants in their storm water discharges
16 through implementation of BAT for toxic and nonconventional pollutants and BCT
17 for conventional pollutants. Defendant has failed to implement BAT and BCT at the
18 Facility for its discharges of pH, TSS, zinc, aluminum, iron, N+N, and other un-
19 monitored pollutants in violation of Effluent Limitation B(3) of the General Permit.
20
21

22 59. Each day since July 7, 2009, that Defendant has failed to develop and
23 implement BAT and BCT in violation of the General Permit is a separate and distinct
24 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
25

26 60. Defendant has been in violation of the BAT/BCT requirements every day
27 since July 7, 2009. Defendant continues to be in violation of the BAT/BCT
28

1 requirements each day that it fails to develop and fully implement BAT/BCT at the
2 Facility.

3
4 **SECOND CAUSE OF ACTION**
5 **Discharges of Contaminated Storm Water**
6 **in Violation of Permit Conditions and the Act**
7 **(Violations of 33 U.S.C. §§ 1311, 1342)**

8 61. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
9 fully set forth herein.

10 62. Discharge Prohibition A(2) of the General Permit requires that storm
11 water discharges and authorized non-storm water discharges shall not cause or threaten
12 to cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and
13 C(2) of the General Permit require that storm water discharges and authorized non-
14 storm water discharges shall not adversely impact human health or the environment,
15 and shall not cause or contribute to a violation of any water quality standards contained
16 in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin
17 Plan.
18

19 63. Plaintiff is informed and believes, and thereupon alleges, that since at least
20 July 7, 2009, Defendant has been discharging polluted storm water from the Facility in
21 excess of applicable water quality standards in violation of the Discharge Prohibition
22 A(2) of the General Permit.
23

24 64. During every rain event, storm water flows freely over exposed materials,
25 waste products, and other accumulated pollutants at the Facility, becoming
26
27
28

1 contaminated with sediment, floating materials, oil sheens, zinc and other un-
2 monitored pollutants at levels above or, in the case of pH, outside of applicable water
3 quality standards. The storm water then flows untreated from the Facility into channels
4 that flow into San Bernardino County's municipal storm sewer system, which
5 discharges into Day Creek, which flows into Reach 3 of the Santa Ana River.
6

7
8 65. Plaintiff is informed and believes, and thereupon alleges, that these
9 discharges of contaminated storm water are causing or contributing to the violation of
10 the applicable water quality standards in a Statewide Water Quality Control Plan and/or
11 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation
12 C(2) of the General Permit.
13

14
15 66. Plaintiff is informed and believes, and thereupon alleges, that these
16 discharges of contaminated storm water are adversely affecting human health and the
17 environment in violation of Receiving Water Limitation C(1) of the General Permit.
18

19 67. Every day since at least July 7, 2009, that Defendant has discharged and
20 continues to discharge polluted storm water from the Facility in violation of the
21 General Permit is a separate and distinct violation of Section 301(a) of the Act, 33
22 U.S.C. § 1311(a). These violations are ongoing and continuous.
23

24
25 ///

26 ///

27
28 ///

THIRD CAUSE OF ACTION

**Failure to Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

68. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

69. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

70. Defendant has failed to develop and implement an adequate SWPPP for the Facility. Defendant's ongoing failure to develop and implement an adequate SWPPP for the Facility is evidenced by, *inter alia*, Defendant's outdoor production of various materials without appropriate best management practices; the continued exposure of significant quantities of various materials to storm water flows; the failure to either treat storm water prior to discharge or to implement effective containment practices; and the continued discharge of storm water pollutants from the Facility at levels in excess of EPA benchmark values and water quality standards.

71. Defendant has failed to update the Facility's SWPPP in response to the analytical results of the Facility's storm water monitoring.

72. Each day since July 7, 2009, that Defendant has failed to develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

1 73. Defendant has been in violation of the SWPPP requirements every day
2 since July 7, 2009. Defendant continues to be in violation of the SWPPP requirements
3 each day that it fails to develop and fully implement an adequate SWPPP for the
4 Facility.
5

6 **FOURTH CAUSE OF ACTION**
7 **Failure to Develop and Implement an**
8 **Adequate Monitoring and Reporting Program**
9 **(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

10 74. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
11 fully set forth herein.

12 75. Section B of the General Permit requires dischargers of storm water
13 associated with industrial activity to have developed and be implementing a
14 monitoring and reporting program (including, *inter alia*, sampling and analysis of
15 discharges) no later than October 1, 1992.
16

17 76. Defendant has failed to develop and implement an adequate monitoring
18 and reporting program for the Facility. Defendant's ongoing failure to develop and
19 implement an adequate monitoring and reporting program are evidenced by, *inter*
20 *alia*, its failure to analyze its storm water discharges for iron and N+N during the past
21 five years.
22

23 77. Each day since July 7, 2009, that Defendant has failed to develop and
24 implement an adequate monitoring and reporting program for the Facility in violation
25 of the General Permit is a separate and distinct violation of the General Permit and
26
27
28

1 Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring
2 and analytical results are ongoing and continuous violations of the Act.

3
4 **FIFTH CAUSE OF ACTION**
5 **False Certification of Compliance in Annual Report**
6 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

7 78. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
8 fully set forth herein.

9 79. Defendant has falsely certified compliance with the General Permit in
10 each of the annual reports submitted to the Regional Board since at least June 28,
11 2010.

12
13 80. Each day since at least June 28, 2010, that Defendant has falsely certified
14 compliance with the General Permit is a separate and distinct violation of the General
15 Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a). Defendant continues to be
16 in violation of the General Permit's certification requirement each day that it maintains
17 its false certification of its compliance with the General Permit.
18

19
20 **VII. RELIEF REQUESTED**

21 Wherefore, Plaintiff respectfully requests that this Court grant the following
22 relief:
23

24 a. Declare Defendant to have violated and to be in violation of the Act as
25 alleged herein;
26

27 b. Enjoin Defendant from discharging polluted storm water from the
28

1 Facility unless authorized by the Permit;

2 c. Enjoin Defendant from further violating the substantive and procedural
3 requirements of the Permit;

4 d. Order Defendant to immediately implement storm water pollution
5 control and treatment technologies and measures that are equivalent to BAT or BCT
6 and prevent pollutants in the Facility's storm water from contributing to violations of
7 any water quality standards;

8 e. Order Defendant to comply with the Permit's monitoring and reporting
9 requirements, including ordering supplemental monitoring to compensate for past
10 monitoring violations;

11 f. Order Defendant to prepare a SWPPP consistent with the Permit's
12 requirements and implement procedures to regularly review and update the SWPPP;

13 g. Order Defendant to provide Plaintiff with reports documenting the
14 quality and quantity of their discharges to waters of the United States and their efforts
15 to comply with the Act and the Court's orders;

16 h. Order Defendant to pay civil penalties of \$37,500 per day per violation
17 for each violation of the Act pursuant to Sections 309(d) and 505(a) of the Act, 33
18 U.S.C. §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;

19 i. Order Defendant to take appropriate actions to restore the quality of
20 waters impaired or adversely affected by their activities;

1 j. Award Plaintiff's costs (including reasonable investigative, attorney,
2 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
3 § 1365(d); and,
4

5 k. Award any such other and further relief as this Court may deem
6 appropriate.
7
8

9 Dated: September 5, 2014

Respectfully submitted,

LOZEAU DRURY LLP

12 By: /s/ Douglas J. Chermak
13 Douglas J. Chermak
14 Attorneys for Plaintiff
15 CENTER FOR COMMUNITY ACTION AND
16 ENVIRONMENTAL JUSTICE
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
dough@lozeaudrury.com

**VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

June 24, 2014

Eric Jensen, EH&S Compliance Manager
Tree Island Wire (USA), Inc. 12459 Arrow Route
Rancho Cucamonga, CA 91739

Mike Burkholder, Operations Manager
Tree Island Wire (USA), Inc.
3880 West Valley Blvd.
Walnut, CA 91789

**Re: Notice of Violations and Intent to File Suit Under the Federal Water
Pollution Control Act**

Dear Mr. Jensen and Mr. Burkholder:

I am writing on behalf of the Center for Community Action and Environmental Justice ("CCA EJ") in regard to violations of the Clean Water Act ("Act") that CCA EJ believes are occurring at the Tree Island Wire (USA), Inc. or TI Wire facility, located at 12459 Arrow Route in Rancho Cucamonga, California ("Facility"). CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ and its members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed. This letter is being sent to you as the responsible owners, officers, or operators of the Facility (all recipients are hereinafter collectively referred to as "TI Wire").

This letter addresses TI Wire's unlawful discharge of pollutants from the Facility through Day Creek into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System ("NPDES") Permit No. CA S000001, State Water Resources Control Board ("State Board") Order No. 92-12-DWQ as amended by Order

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 2 of 12

No. 97-03-DWQ (hereinafter “General Permit”).¹ The WDID identification number for the Facility listed on documents submitted to the Santa Ana Regional Water Quality Control Board (“Regional Board”) is 8 361003788. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the Clean Water Act requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”) and the State in which the violations occur.

As required by the Clean Water Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, TI Wire is hereby placed on formal notice by CCAEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against TI Wire under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the Clean Water Act and the General Permit. These violations are described more extensively below.

I. Background.

On April 3, 1992, the State Board approved TI Wire’s Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (“NOI”). In its NOI, TI Wire has certified that the Facility is classified under SIC Code 3315. The Facility discharges storm water from its 17 acre industrial site from at least three storm water outfalls. CCAEJ is informed and believes that all storm water discharged from the site is associated with industrial activity or, alternatively, includes commingled storm water from both industrial and non-industrial activity. The outfalls discharge into San Bernardino County’s municipal storm sewer system, which discharges into Day Creek, which flows into Reach 3 of the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River, including its tributary, Day Creek, and established water quality standards for it in the “Water Quality Control Plan for the Santa Ana River Basin (Region 8)”, generally referred to as the Basin Plan. *See* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml. The beneficial uses of these waters include, among others, municipal and domestic supply, groundwater recharge, water contact recreation, non-contact water recreation, cold freshwater habitat, wildlife habitat, agricultural supply, warm freshwater habitat, and rare, threatened or endangered species.

¹ On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”) and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 3 of 12

The non-contact water recreation use is defined as “[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities.” *Id.* at 3-3. Contact recreation use includes fishing and wading. *Id.* at 3-2. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people’s use of the Santa Ana River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health.” *Id.* at 4-17. The Basin Plan includes a narrative oil and grease standard which states that “[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that “waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses...” *Id.* at 4-16. The Basin Plan provides that “[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5...” *Id.* at 4-15. The Basin Plan contains a narrative floatables standard which states that “[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses.” *Id.* at 4-11. The Basin Plan contains a narrative color standard which states that “[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses.” *Id.* at 4-10. The Basin Plan contains a nitrate standard that “[n]itrate-nitrogen standards shall not exceed 45 mg/L (as NO₃) or 10 mg/L (as N) in inland surface waters designated MUN as a result of controllable water quality factors.” *Id.* at 4-14.

The EPA has adopted a freshwater numeric water quality standard for zinc of 0.120 mg/L (Criteria Maximum Concentration – “CMC”). 65 Fed.Reg. 31712 (May 18, 2000) (California Toxics Rule).²

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (“BAT”) and best conventional pollutant control technology (“BCT”).³ The following benchmarks have been established for pollutants discharged by TI Wire: pH – 6.0 - 9.0 standard units (“s.u.”); total suspended solids (“TSS”) – 100 mg/L, oil and grease (“O&G”)

² The value for zinc is expressed as a function of total hardness (mg/L) in the water body and correspond to a total hardness of 100 mg/L, which is the default listing in the California Toxics Rule.

³ The Benchmark Values can be found at:

http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf and

<http://cwea.org/p3s/documents/multi-sectorrev.pdf> (Last accessed on May 23, 2014).

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 4 of 12

– 15 mg/L, iron – 1.0 mg/L, nitrate + nitrite as nitrogen – 0.68 mg/L, aluminum – 0.75 mg/L, and zinc – 0.13 mg/L.⁴

II. Alleged Violations of the NPDES Permit.

A. Discharges in Violation of the Permit

TI Wire has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are TSS, O&G, pH, biochemical oxygen demand, and fecal coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.*; 40 C.F.R. § 401.15.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

TI Wire has discharged and continues to discharge storm water with unacceptable levels of pH, TSS, zinc, aluminum, and other pollutants in violation of the General Permit. TI Wire's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

⁴ The value for zinc is hardness dependent. The value here is based on a hardness range of 100 – 125 mg/L CaCO₃, which is the default listing in the California Toxics Rule.

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 5 of 12

The following discharges of pollutants from the Facility have contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan and the California Toxics Rule as well as narrative water quality standards in the Basin Plan and have thus violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Permit.

Date	Parameter	Observed Concentration / Conditions	Basin Plan Water Quality Standard / California Toxics Rule	Outfall (as identified by the Facility)
12/19/2013	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
12/19/2013	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
10/28/2013	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
10/28/2013	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
2/8/2013	pH	9.1 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
2/8/2013	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
11/4/2011	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
11/4/2011	pH	8.9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
11/4/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
10/6/2011	pH	9.2 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
10/6/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
10/6/2011	pH	8.8 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
4/28/2010	pH	9 s.u.	6.5 – 8.5 s.u.	E-1 West Culvert
4/28/2010	pH	9 s.u.	6.5 – 8.5 s.u.	E-2 South of Office
4/28/2010	pH	8.7 s.u.	6.5 – 8.5 s.u.	E-3 South of EVG
12/19/2013	Zinc	0.94 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
12/19/2013	Zinc	0.4 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
10/28/2013	Zinc	0.16 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
10/28/2013	Zinc	1.7 mg/L	0.12 mg/L (CMC)	E-2 South of Office
10/28/2013	Zinc	0.69 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
2/8/2013	Zinc	0.14 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
2/8/2013	Zinc	4.3 mg/L	0.12 mg/L (CMC)	E-2 South of Office
11/4/2011	Zinc	2 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
11/4/2011	Zinc	1.2 mg/L	0.12 mg/L (CMC)	E-2 South of Office
11/4/2011	Zinc	0.46 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
10/6/2011	Zinc	0.66 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
10/6/2011	Zinc	0.45 mg/L	0.12 mg/L (CMC)	E-2 South of Office
10/6/2011	Zinc	0.82 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
10/6/2010	Zinc	1.7 mg/L	0.12 mg/L (CMC)	E-1 West Culvert
10/6/2010	Zinc	1 mg/L	0.12 mg/L (CMC)	E-2 South of Office
10/6/2010	Zinc	0.45 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
4/28/2010	Zinc	0.27 mg/L	0.12 mg/L (CMC)	E-1 West Culvert

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 6 of 12

4/28/2010	Zinc	0.14 mg/L	0.12 mg/L (CMC)	E-3 South of EVG
4/30/2014	Narrative	Cloudy, Debris	Basin Plan at 4-16; Basin Plan at 4-11	Discharge E1
12/19/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
12/19/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E2
11/21/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E1
10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E2
10/28/2013	Narrative	Cloudy	Basin Plan at 4-16	Discharge E3
2/8/2013	Narrative	Cloudy, Dirt	Basin Plan at 4-16	E-2 South of Office
3/31/2012	Narrative	Cloudy	Basin Plan at 4-16	E-2 South of Office
3/31/2012	Narrative	Cloudy	Basin Plan at 4-16	E-3 South of EVG
1/21/2012	Narrative	Cloudy grey water	Basin Plan at 4-16	E-2 South of Office
1/21/2012	Narrative	Cloudy grey water	Basin Plan at 4-16	E-3 South of EVG
10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-1 West Culvert
10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-2 South of Office
10/5/2011	Narrative	Cloudy grey water	Basin Plan at 4-16	E-3 South of EVG
10/5/2010	Narrative	Oil sheen and murky water	Basin Plan at 4-15; Basin Plan at 4-16	E-1 West Culvert
10/5/2010	Narrative	Oil sheen and murky water	Basin Plan at 4-15; Basin Plan at 4-16	E-2 South of Office
10/5/2010	Narrative	Oil sheen and murky water	Basin Plan at 4-15; Basin Plan at 4-16	E-3 South of EVG

The information in the above table reflects data gathered from TI Wire's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 wet seasons. CCAEJ alleges that during each of those wet seasons and continuing through today, TI Wire has discharged storm water contaminated with pollutants at levels or observations that exceed or violate one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u. (Basin Plan)
- Zinc – 0.12 mg/L (CMC)
- Oil and Grease – Waste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-15)
- Suspended/Settleable Solid – Waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16)

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 7 of 12

- Floating materials - Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-11)

The following discharges of pollutants from the Facility have violated Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) and are evidence of ongoing violations of Effluent Limitation B(3) of the General Industrial Storm Water Permit.

Date	Parameter	Observed Concentration	EPA Benchmark Value	Location (as identified by the Facility)
12/19/2013	Zinc	0.94 mg/L	0.13 mg/L	E-1 West Culvert
12/19/2013	Aluminum	2 mg/L	0.75 mg/L	E-1 West Culvert
12/19/2013	Zinc	0.4 mg/L	0.13 mg/L	E-3 South of EVG
12/19/2013	Aluminum	1.6 mg/L	0.75 mg/L	E-3 South of EVG
10/28/2013	Zinc	0.16 mg/L	0.13 mg/L	E-1 West Culvert
10/28/2013	Total Suspended Solids	1300 mg/L	100 mg/L	E-2 South of Office
10/28/2013	Zinc	1.7 mg/L	0.13 mg/L	E-2 South of Office
10/28/2013	Aluminum	26 mg/L	0.75 mg/L	E-2 South of Office
10/28/2013	Total Suspended Solids	200 mg/L	100 mg/L	E-3 South of EVG
10/28/2013	Zinc	0.69 mg/L	0.13 mg/L	E-3 South of EVG
10/28/2013	Aluminum	3.4 mg/L	0.75 mg/L	E-3 South of EVG
2/8/2013	Zinc	0.14 mg/L	0.13 mg/L	E-1 West Culvert
2/8/2013	Total Suspended Solids	2500 mg/L	100 mg/L	E-2 South of Office
2/8/2013	Zinc	4.3 mg/L	0.13 mg/L	E-2 South of Office
2/8/2013	Aluminum	55 mg/L	0.75 mg/L	E-2 South of Office
2/8/2013	pH	9.1 s.u.	6.0 – 9.0 s.u.	E-3 South of EVG
2/8/2013	Total Suspended Solids	310 mg/L	100 mg/L	E-3 South of EVG
11/4/2011	Total Suspended Solids	290 mg/L	100 mg/L	E-1 West Culvert
11/4/2011	Zinc	2 mg/L	0.13 mg/L	E-1 West Culvert
11/4/2011	Aluminum	5 mg/L	0.75 mg/L	E-1 West Culvert
11/4/2011	Total Suspended Solids	230 mg/L	100 mg/L	E-2 South of Office
11/4/2011	Zinc	1.2 mg/L	0.13 mg/L	E-2 South of Office
11/4/2011	Aluminum	11 mg/L	0.75 mg/L	E-2 South of Office
11/4/2011	Zinc	0.46 mg/L	0.13 mg/L	E-3 South of EVG
11/4/2011	Aluminum	1.5 mg/L	0.75 mg/L	E-3 South of EVG
10/6/2011	pH	9.2 s.u.	6.0 – 9.0 s.u.	E-1 West Culvert
10/6/2011	Zinc	0.66 mg/L	0.13 mg/L	E-1 West Culvert
10/6/2011	Total Suspended Solids	130 mg/L	100 mg/L	E-2 South of Office
10/6/2011	Zinc	0.45 mg/L	0.13 mg/L	E-2 South of Office
10/6/2011	Aluminum	3.4 mg/L	0.75 mg/L	E-2 South of Office
10/6/2011	Zinc	0.82 mg/L	0.13 mg/L	E-3 South of EVG
10/6/2011	Aluminum	3.6 mg/L	0.75 mg/L	E-3 South of EVG
10/6/2010	Total Suspended Solids	130 mg/L	100 mg/L	E-1 West Culvert

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 8 of 12

10/6/2010	Zinc	1.7 mg/L	0.13 mg/L	E-1 West Culvert
10/6/2010	Aluminum	2.4 mg/L	0.75 mg/L	E-1 West Culvert
10/6/2010	Total Suspended Solids	300 mg/L	100 mg/L	E-2 South of Office
10/6/2010	Zinc	1 mg/L	0.13 mg/L	E-2 South of Office
10/6/2010	Aluminum	6.5 mg/L	0.75 mg/L	E-2 South of Office
10/6/2010	Zinc	0.45 mg/L	0.13 mg/L	E-3 South of EVG
10/6/2010	Aluminum	1.7 mg/L	0.75 mg/L	E-3 South of EVG
4/28/2010	Zinc	0.27 mg/L	0.13 mg/L	E-1 West Culvert
4/28/2010	Aluminum	0.81 mg/L	0.75 mg/L	E-1 West Culvert
4/28/2010	Zinc	0.14 mg/L	0.13 mg/L	E-3 South of EVG

The information in the above table reflects data gathered from TI Wire's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 wet seasons. CCAEJ alleges that during each of those rainy seasons and continuing through today, TI Wire has discharged storm water contaminated with pollutants at levels that exceed one or more applicable EPA Benchmarks, including but not limited to each of the following:

- Total Suspended Solids – 100 mg/L
- pH – 6.0 – 9.0 s.u.
- Aluminum – 0.75 mg/L
- Zinc – 0.13 mg/L

CCAIEJ's investigation, including its review of TI Wire's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable water quality standards and the EPA's benchmark values indicates that TI Wire has not implemented BAT and BCT at the Facility for its discharges of pH, TSS, aluminum, zinc, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. TI Wire was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, TI Wire is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the tables above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAIEJ alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since June 24, 2009, and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAIEJ alleges that TI Wire has discharged storm water containing impermissible levels of pH, TSS, aluminum, and zinc in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2), and Receiving Water Limitations C(1) and C(2) of the General Permit.⁵

⁵ The rain dates are all the days when an average of 0.1" or more rain fell as measured by a weather station located approximately 15.5 miles away from the Facility in Riverside. Data from the weather station is available at

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 9 of 12

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Industrial Storm Water Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TI Wire is subject to penalties for violations of the General Permit and the Act since June 24, 2009.

B. Failure to Develop and Implement an Adequate Monitoring and Reporting Program

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the “quality and quantity of the facility’s storm water discharges from the storm event.”

The above-referenced data was obtained from the Facility’s monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by TI Wire is not representative of the quality of the Facility’s various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CCAEJ, alleges that the Facility’s monitoring program violates Sections B(3), (4), (5) and (7) of the General Permit.

Section B(5)(c)(ii) of the General Permit requires the Facility to analyze storm water samples for “toxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities.” On information and belief, CCAEJ alleges that both iron and nitrate + nitrite as nitrogen (“N+N”) are likely to be present in storm water discharges from the Facility in significant quantities. TI Wire sampled for iron during both of its storm water sampling events during the 2008-2009 wet season. All six samples that the Facility took contained iron levels well in excess of the EPA’s Benchmark value for iron of 1.0 mg/L. The Facility’s Annual Reports also mention iron oxide from mechanical de-scaling operations as a potential pollutant source. In addition, during the 2006-2007 wet season the Facility sampled for N+N in at least three storm water samples. The levels of N+N contained in the Facility’s storm water were all in excess of the EPA’s Benchmark value for N+N of 0.68 mg/L. This, CCAEJ alleges that TI Wire failed to analyze for both iron and N+N in all storm water samples taken at the Facility during the past five years. This results in at least forty violations of the General Permit and the Act.

http://www.ipm.ucdavis.edu/calludt.cgi/WXDESCRIPTION?STN=UC_RIVER.A (last accessed on June 24, 2014.) The rain dates also include days when the Facility reported a discharge in its Annual Reports.

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite
Page 10 of 12

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, TI Wire is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since June 24, 2009.

C. Failure to Prepare, Implement, Review and Update an Adequate Storm Water Pollution Prevention Plan

Section A and Provision E(2) of the General Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan ("SWPPP") no later than October 1, 1992. Section A(1) and Provision E(2) require dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices ("BMPs") to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)).

CCA EJ's investigation of the conditions at the Facility as well as TI Wire's Annual Reports indicate that TI Wire has been operating with an inadequately developed or implemented SWPPP in violation of the requirements set forth above. TI Wire has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. TI Wire has been in continuous violation of Section A and Provision E(2) of the General Permit every day since June 24, 2009, at the very latest, and will continue to be in violation every day that TI Wire fails to prepare,

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite

Page 11 of 12

implement, review, and update an effective SWPPP. TI Wire is subject to penalties for violations of the General Permit and the Act occurring since June 24, 2009.

D. Failure to File True and Correct Annual Reports

Section B(14) of the General Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

For the last five years, TI Wire and its agents, Mike Burkholder and Dale Young, inaccurately certified in its Annual Reports that the Facility was in compliance with the General Permit. Consequently, TI Wire has violated Sections A(9)(d), B(14) and C(9) & (10) of the General Permit every time TI Wire failed to submit a complete or correct report and every time TI Wire or its agents falsely purported to comply with the Act. TI Wire is subject to penalties for violations of Section (C) of the General Permit and the Act occurring since at least June 28, 2010.

III. Persons Responsible for the Violations.

CCAIEJ puts Tree Island Wire (USA), Inc., Mike Burkholder, and Eric Jensen on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCAIEJ puts TI Wire on notice that it intends to include those persons in this action.

IV. Name and Address of Noticing Parties.

The name, address, and telephone number of CCAIEJ is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

CCAIEJ has retained counsel to represent it in this matter. Please direct all communications to:

June 24, 2014

Tree Island Wire (USA), Inc. – Notice of Violations and Intent to File Suite
Page 12 of 12

Michael R. Lozeau
Douglas J. Chermak
Lozeau Drury LLP
410 12th Street, Suite 250
Oakland, California 94607
Tel. (510) 836-4200
michael@lozeaudrury.com
doug@lozeaudrury.com

Gideon Kracov
The Law Office of Gideon Kracov
801 South Grand Avenue
11th Floor
Los Angeles, California 90017
Tel: (213) 629-2071
gk@gideonlaw.net

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects TI Wire to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCAEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against TI Wire and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAIEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Douglas J. Chermak
Lozeau Drury LLP
Attorneys for Center for Community Action and
Environmental Justice

cc via first class mail: Bruce Yost, Agent for Service of Process
Tree Island Wire (USA), Inc.
3880 W. Valley Blvd.
Walnut, CA 91789

SERVICE LIST – via certified mail

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA, 94105

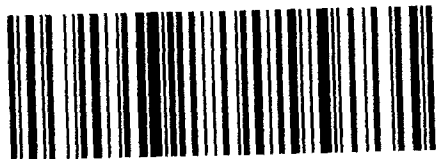
Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street, Suite 500
Riverside, CA 92501-3348

ATTCHMENT A

Rain Dates, TI Wire, Rancho Cucamonga, California

11/28/2009	12/18/2010	3/17/2012
12/7/2009	12/19/2010	3/18/2012
12/12/2009	12/20/2010	3/31/2012
12/13/2009	12/21/2010	4/11/2012
12/30/2009	12/22/2010	4/13/2012
1/17/2010	12/25/2010	4/25/2012
1/18/2010	12/29/2010	4/26/2012
1/19/2010	1/2/2011	8/30/2012
1/20/2010	1/3/2011	10/11/2012
1/21/2010	1/30/2011	11/8/2012
1/22/2010	2/16/2011	12/12/2012
1/26/2010	2/18/2011	12/13/2012
2/5/2010	2/19/2011	12/18/2012
2/6/2010	2/25/2011	12/24/2012
2/9/2010	2/26/2011	12/29/2012
2/22/2010	3/20/2011	1/24/2013
2/27/2010	3/21/2011	1/25/2013
3/4/2010	3/23/2011	2/8/2013
3/6/2010	4/8/2011	2/19/2013
4/5/2010	5/18/2011	3/7/2013
4/12/2010	7/31/2011	3/8/2013
4/20/2010	10/5/2011	5/6/2013
4/22/2010	10/6/2011	7/20/2013
4/28/2010	11/4/2011	10/9/2013
10/6/2010	11/6/2011	11/21/2013
11/8/2010	11/12/2011	12/7/2013
11/20/2010	11/20/2011	2/6/2014
11/21/2010	12/12/2011	2/28/2014
11/24/2010	1/21/2012	3/1/2014
12/5/2010	1/23/2012	4/1/2014
12/6/2010	2/15/2012	4/2/2014
12/16/2010	2/27/2012	4/25/2014

Drury LLP
Street, Suite 250
ad, CA 94607



7012 3460 0003 1214 8233

\$7.610
US POSTAGE
FIRST-CLASS
062S0007172058
94607

B21575 05



Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

ROM: LOZEAU DRURY LLP
:ARR: United States Postal Service
RK#: 70123460000312148233
CVD: 3/26/2015 1433

TO: Hebb, Kevin M. (ENRD)
PH: 202-373-7550
BDG: PH
RM:
PCS: 1



9999000066052

RTE:
MSC: PH2121
Hebb, Kevin M. (ENRD)

DOJ MAILROOM

MAR 26 2015

X-RAYED